

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation)	
Against:)	
)	
)	
YOLANDA WAI NG, M.D.)	Case No. 800-2015-016674
)	
Physician's and Surgeon's)	
Certificate No. A 131737)	
)	
Respondent)	
_____)	

DECISION AND ORDER

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the Proposed Decision. The Proposed Decision is amended as follows:

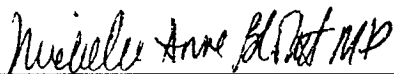
1. Page 1 – first paragraph, line 2 – “and expired on May 31, 2016” is stricken and replaced with “and expires on May 31, 2018”.

The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on March 16, 2017.

IT IS SO ORDERED: February 14, 2017.

MEDICAL BOARD OF CALIFORNIA



Michelle Anne Bholat, M.D., Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

YOLANDA WAI NG, M.D.

Physician's and Surgeon's Certificate
No. A131737,

Respondent.

Case No. 800-2015-016674

OAH No. 2016070932

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on December 1, 2016, in Oakland, California.

Deputy Attorney GeneralCarolynce Evans represented complainant Kimberly Kirchmeyer, the Executive Director of the Medical Board of California, Department of Consumer Affairs.

Respondent Yolanda Wai Ng, M.D., was present and was represented by John L. Fleer, Attorney at Law.

The record closed and the matter was submitted on December 1, 2016.

FACTUAL FINDINGS

1. On July 21, 2014, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. A131737 (certificate) to Yolanda Wai Ng, M.D. The certificate was in full force and effect during the events set forth below, and expired on May 31, 2016. Respondent's certificate is currently suspended pursuant to an out of state suspension order issued by the Board on September 25, 2015, pursuant to Business and Professions Code section 2310.

2. On December 1, 2015, complainant Kimberly Kirchmeyer, acting in her official capacity as Executive Director of the Board, issued an accusation against respondent. The accusation alleges that respondent's California certificate is subject to discipline because of actions taken by the Washington Medical Quality Assurance Commission (Washington

Commission) against respondent's license to practice medicine in Washington. Respondent requested a hearing, and this hearing followed.

Action by the Washington Commission

3. On August 18, 2010, the State of Washington issued respondent a license to practice as a physician and surgeon.

4. On August 20, 2015, the Washington Commission issued a Stipulated Findings of Fact, Conclusions of Law, and Agreed Order (Agreed Order) suspending respondent's license to practice medicine in Washington. The facts and circumstances surrounding the Agreed Order are set forth in Factual Findings 5 through 7.

5. On June 1, 2014, respondent began working for a health care network in eastern Washington. During a routine employment intake examination respondent had a positive urine toxicology screen for marijuana metabolites. On July 8, 2014, respondent's employer referred her to the Washington Physician's Health Program (WPHP). WPHP referred respondent to Hazelden Springbrook (Hazelden) for a multidisciplinary evaluation.

6. Hazelden's evaluation concluded that respondent required inpatient treatment for marijuana dependence, and that she could not safely return to work until she completed such treatment. In August 2014, respondent notified WPHP that she would not enter treatment. She has continued to refuse treatment, as recommended by WPHP. After respondent refused treatment, WPHP informed the Washington Commission that respondent is "impaired by untreated cannabis dependence and is unable to safely practice medicine with appropriate safety to patients."

7. The Washington Commission found that respondent's "misuse of marijuana during her employment, demonstrated a potential inability to treat patients with reasonable skill and safety" and constituted unprofessional conduct. The Washington Commission further found that "Patient safety requires indefinite suspension of Respondent's license preventing her from treating patients with no right to petition for termination" until she complies with the treatment and recommendations of WPHP and is deemed safe to practice medicine.

Respondent's evidence

8. Respondent is 40 years old and is originally from San Jose, California. She received her undergraduate degree from University of California at Los Angeles. She received her medical degree from St. George's University in Grenada, in 2007. Respondent completed a residency in pediatrics in 2010, and a fellowship in pediatric nephrology in 2013.

9. Respondent began smoking marijuana in medical school. Respondent stated that she used marijuana two to three times each month for one year prior to testing positive

for marijuana. She used marijuana, in part, to alleviate back pain and menstrual cramps. Marijuana is legal in the state of Washington.

10. Respondent maintains that she did not follow through with Hazelden's recommendation that she complete a 90-day inpatient treatment program because she disagreed that she required treatment for cannabis dependency and because she could not afford the program. (According to respondent, the cost of Hazelden's program was \$50,000.)

11. Respondent is pregnant. She stated that she last used marijuana on May 21, 2014, when she consumed a birthday cake that was made with cannabis. Given respondent's refusal to enter treatment for cannabis dependency, her testimony regarding the date on which she last used marijuana, which was uncorroborated by other evidence, was not convincing.

12. This is respondent's first disciplinary matter.

13. Respondent resides in California. Since her suspension on September she has worked editing science papers on a part-time basis, and she has also taken art classes.

14. Respondent firmly believes that she does not require treatment for cannabis dependency. She states that she is willing to submit to a substance abuse evaluation to instill the Board's confidence in her safety to practice medicine.

LEGAL CONCLUSIONS

1. The standard of proof applied in making the factual findings set forth above is clear and convincing evidence to a reasonable certainty.

2. Business and Professions Code¹ section 141, subdivision (a), applies generally to licenses issued by agencies that are part of the Department of Consumer Affairs, such as the Board. It provides, in relevant part, as follows:

For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action by another state . . . for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board.

¹ All references are to the Business and Professions Code unless otherwise indicated.

Insofar as the Agreed Order in Washington was based upon a determination that respondent's use of marijuana during her employment as a physician demonstrated a potential risk of harm to her patients, the disciplinary action was based on acts substantially related to the practice of medicine. Accordingly, cause exists under section 141 to take disciplinary action against respondent's certificate, by reason of the matters set forth in Findings 4 through 7.

3. Section 2305, which applies specifically to licenses issued by the Board, provides in relevant part as follows:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state . . . that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

The conduct for which respondent was disciplined for in Washington, set forth in Factual Findings 5 through 7, constitutes cause for disciplinary action in California under sections 2234 (general unprofessional conduct) and 2239 (use of controlled substance²). Accordingly, cause exists under section 2305 to take disciplinary action against respondent's certificate.

Disciplinary considerations

4. Cause for discipline having been established, the issue is the appropriate level of discipline to impose. The Board's disciplinary guidelines for a violation of section 2234 recommend a stayed revocation and five years' probation, subject to appropriate terms and conditions; the maximum discipline is license revocation.

Complainant argues that revocation is the appropriate discipline in the instant case. While respondent's refusal to enter treatment for her cannabis dependence raises serious concerns regarding her willingness to take appropriate action to ensure the safety of her patients, given respondent's current willingness to undergo an evaluation, and presumably treatment if required, protection of the public can be achieved by placing respondent on probation for a period of five years, subject to terms and conditions.

The Board's Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th ed., 2011), and "Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees" (Guidelines) provide guidance to the appropriate disposition of this matter. (Cal. Code Regs., tit. 16, § 1361.) Where, as here, a licensee is disciplined for unprofessional conduct involving the abuse of drugs, the licensee is presumed to be a

² Official notice is taken of Health and Safety Code section 11054, subdivision (c)(13), which classifies marijuana as a Schedule I controlled substance.

“substance-abusing licensee” and subject to mandatory terms and conditions of probation outlined in the Uniform Standards for Substance-Abusing Licensees. (Cal. Code Regs., tit. 16, § 1361, subd. (b), and § 1361.5, subds. (a) & (c).)

As set forth below, respondent’s certificate shall be placed on probation for a period of five years, pursuant to the probation conditions in the Guidelines, as well as other terms contained in the Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th ed., 2011). Inasmuch as the basis for respondent’s discipline in Washington did not involve the use of alcohol, and there was no evidence presented at hearing that respondent abuses alcohol, she will not be required to abstain from alcohol as a condition of probation.

ORDER

Physician’s and Surgeon’s Certificate No. A131737, issued to Yolanda Wai Ng, M.D., is revoked. However, revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. Clinical Diagnostic Evaluations and Reports

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three years’ experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with respondent within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator’s opinion, whether respondent has a substance abuse problem, whether respondent is a threat to herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to respondent’s rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that respondent is a threat

to herself or others, the evaluator shall notify the Board within 24 hours of such a determination.

In formulating his or her opinion as to whether respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: Respondent's license type; respondent's history; respondent's documented length of sobriety (i.e., length of time that has elapsed since respondent's last substance use); respondent's scope and pattern of substance abuse; respondent's treatment history, medical history and current medical condition; the nature, duration and severity of respondent's substance abuse problem or problems; and whether respondent is a threat to herself or the public.

For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than 10 days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed 30 days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five business days of receipt to determine whether respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on respondent based on the recommendations made by the evaluator. Respondent shall not be returned to practice until she has at least 30 days of negative biological fluid tests or biological fluid tests indicating that she has not used, consumed, ingested, or administered to herself a prohibited substance, as defined in section 1361.51, subdivision (e), of title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Respondent shall not engage in the practice of medicine until notified by the Board or its designee that she is fit to practice medicine safely. The period of time that respondent is not practicing medicine shall not be counted toward completion of the term of probation. Respondent shall undergo biological fluid testing as required in this Decision at least two times per week while awaiting the notification from the Board if she is fit to practice medicine safely.

Respondent shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within 15 calendar days after being notified by the Board or its designee.

2. Notice of Employer or Supervisor Information

Within seven days of the effective date of this Decision, respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Respondent shall also provide specific, written consent for the Board, respondent's worksite monitor, and respondent's employers and supervisors to communicate regarding respondent's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when respondent has medical staff privileges.

3. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Respondent shall be tested on the date of the notification as directed by the Board or its designee. The Board may order respondent to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by respondent.

During the first year of probation, respondent shall be subject to 52 to 104 random tests. During the second year of probation and for the duration of the probationary term, respondent shall be subject to 36 to 104 random tests per year. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, respondent shall contract with a laboratory or service, approved in advance by the Board or its designee, which will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

- (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
- (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
- (d) Its specimen collectors observe the collection of testing specimens.
- (e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
- (f) Its testing locations shall submit a specimen to a laboratory within one business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven business days of receipt of the specimen. The Board will be notified of non-negative results within one business day and will be notified of negative test results within seven business days.
- (g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test respondent on any day of the week.
- (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.
- (i) It maintains testing sites located throughout California.
- (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows respondent to check in daily for testing.
- (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.
- (l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the

appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one business day and negative test results within seven business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent.

If a biological fluid test result indicates respondent has used, consumed, ingested, or administered to herself a prohibited substance, the Board shall order respondent to cease practice and instruct respondent to leave any place of work where respondent is practicing medicine or providing medical services. The Board shall immediately notify all of respondent's employers, supervisors and work monitors, if any, that respondent may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, her treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of respondent's urine, blood, breath, or hair.

For purposes of this condition, the term “prohibited substance” means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by respondent and approved by the Board, or any other substance the respondent has been instructed by the Board not to use, consume, ingest, or administer to herself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, respondent has committed a major violation, as defined in section 1361.52, subdivision (a), and the Board shall impose any or all of the consequences set forth in section 1361.52, subdivision (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance respondent’s rehabilitation.

4. Substance Abuse Support Group Meetings

Within 30 days of the effective date of this Decision, respondent shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which she shall attend for the duration of probation. Respondent shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Respondent shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three years of experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with respondent within the last five years. Respondent’s previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing respondent’s name, the group name, the date and location of the meeting, respondent’s attendance, and respondent’s level of participation and progress. The facilitator shall report any unexcused absence by respondent from any substance abuse support group meeting to the Board, or its designee, within 24 hours of the unexcused absence.

5. Worksite Monitor for Substance-Abusing Licensee

Within 30 calendar days of the effective date of this decision, respondent shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available,

or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring respondent at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with respondent, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but respondent's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall respondent's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five years, and shall sign an affirmation that he or she has reviewed the terms and conditions of respondent's disciplinary order and agrees to monitor respondent as set forth by the Board or its designee.

Respondent shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with respondent in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding respondent's behavior, if requested by the Board or its designee; and review respondent's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and respondent's employer or supervisor within one business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; respondent's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) respondent's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates respondent had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of respondent's work attendance; (8) any change in respondent's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by

respondent. Respondent shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, respondent shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If respondent fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Respondent shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

6. Violation of Probation Condition for Substance-Abusing Licensees

Failure to fully comply with any term or condition of probation is a violation of probation.

A. If respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of Regulations, at respondent's expense. The cease-practice order issued by the Board or its designee shall state that respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as 30 calendar days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that she may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer respondent for further disciplinary action, such as suspension, revocation, or other action as determined by

the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

B. If respondent commits a minor violation of probation as defined by section 1361.52, subdivision (c), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

- (1) Issue a cease-practice order;
- (2) Order practice limitations;
- (3) Order or increase supervision of respondent;
- (4) Order increased documentation;
- (5) Issue a citation and fine, or a warning letter;
- (6) Order respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of Regulations, at respondent's expense;
- (7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke respondent's probation if she has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. Controlled Substances - Abstain From Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, respondent shall notify the Board or its designee of the: Issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide respondent with a hearing within 30 days of the request, unless respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide respondent with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

8. Notification

Within seven days of the effective date of this Decision, respondent shall provide a true copy of this Decision to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

9. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

10. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

11. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

12. General Probation Requirements

Compliance with Probation Unit: Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes: Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

Place of Practice: Respondent shall not engage in the practice of medicine in respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal: Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California: Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

13. Interview with the Board or its designee

Respondent shall be available in person upon request for interviews either at respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

14. Non-Practice While on Probation

Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of respondent's return to practice. Non-practice is defined as any period of time respondent is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event respondent's period of non-practice while on probation exceeds 18 calendar months, respondent shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; and General Probation Requirements.

15. Completion of Probation

Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

16. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

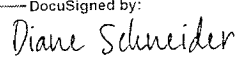
17. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request to surrender her license. The Board reserves the right to evaluate respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

18. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

DATED: December 22, 2016

DocuSigned by:

R77FE670BA7A431

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings

KAMALA D. HARRIS
Attorney General of California
JANE ZACK SIMON
Supervising Deputy Attorney General
MACHAELA M. MINGARDI
Deputy Attorney General
State Bar No. 194400
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5696
Facsimile: (415) 703-5480
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2015-016674

YOLANDA WAI NG, M.D.
1108 Amur Creek Court
San Jose, CA 95120

A C C U S A T I O N

Physician's and Surgeon's No. A131737,
Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs ("Board").

2. On or about July 21, 2014, the Medical Board issued Physician's and Surgeon's Number A131737 to Yolanda Wai Ng, M.D. (Respondent). The certificate was renewed, with an expiration date of May 31, 2016. On September 25, 2015, the Board issued an Out of State Suspension Order pursuant to California Business and Professions Code section 2310, immediately suspending Respondent's license. A true and correct copy of the Out of State Suspension Order is attached herein as Exhibit A.

1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 sections of the California Business and Professions Code (“Code”) and/or other relevant statutory
4 enactment:

5 A. Section 2227 of the Code provides in part that the Board may revoke,
6 suspend for a period not to exceed one year, or place on probation, the license of any
7 licensee who has been found guilty under the Medical Practice Act, and may recover the
8 costs of probation monitoring.

9 B. Section 2305 of the Code provides, in part, that the revocation, suspension,
10 or other discipline, restriction or limitation imposed by another state upon a license to
11 practice medicine issued by that state, or the revocation, suspension, or restriction of the
12 authority to practice medicine by any agency of the federal government, that would have
13 been grounds for discipline in California under the Medical Practice Act, constitutes
14 grounds for discipline for unprofessional conduct.

15 C. Section 141 of the Code provides:

16 “(a) For any licensee holding a license issued by a board under the jurisdiction
17 of a department, a disciplinary action taken by another state, by any agency of the
18 federal government, or by another country for any act substantially related to the
19 practice regulated by the California license, may be a ground for disciplinary
20 action by the respective state licensing board. A certified copy of the record of the
21 disciplinary action taken against the licensee by another state, an agency of the
22 federal government, or by another country shall be conclusive evidence of the
23 events related therein.

(b) Nothing in this section shall preclude a board from applying a specific
statutory provision in the licensing act administered by the board that provides for
discipline based upon a disciplinary action taken against the licensee by another
state, an agency of the federal government, or another country.”

24 **FIRST CAUSE FOR DISCIPLINE**

(Discipline, Restriction, or Limitation Imposed by Another State)

25 4. On August 20, 2015, the State of Washington Medical Quality Assurance
26 Commission (“Washington Commission”) issued a Stipulated Findings of Fact, Conclusions of
27 Law, and Agreed Order (“Agreed Order”) regarding Respondent’s license to practice medicine in
28 the State of Washington. The Agreed Order contains factual findings that Respondent is impaired

1 and unsafe to practice medicine due to misuse of marijuana, a controlled substance. The Agreed
2 Order contains factual findings that Respondent was assessed and found to be unsafe to practice
3 until she completes inpatient treatment for marijuana dependence, which she refuses to do.
4 Respondent was found to have committed unprofessional conduct and her license to practice
5 medicine in the State of Washington was suspended indefinitely. True and correct copies of the
6 Statement of Charges and the Agreed Order issued by the Washington Commission are attached
7 as Exhibit B.

8 5. Respondent's conduct and the action of the Washington Commission as set forth
9 in paragraph 4, above, constitutes cause for discipline pursuant to sections 2305 and/or 141 of the
10 Code.

11 **PRAYER**

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Medical Board of California issue a decision:

14 1. Revoking or suspending Physician's and Surgeon's Number A131737, issued to
15 Yolanda Wai Ng, M.D.;

16 2. Revoking, suspending or denying approval of Yolanda Wai Ng, M.D.'s authority to
17 supervise physician assistants, pursuant to section 3527 of the Code;

18 3. Ordering Yolanda Wai Ng, M.D., if placed on probation, to pay the Board the costs of
19 probation monitoring; and

20 4. Taking such other and further action as deemed necessary and proper.
21

22
23 DATED: December 1, 2015


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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EXHIBIT A



MEDICAL BOARD OF CALIFORNIA
Executive Office



September 25, 2015

Yolanda Wai Ng, M.D.
1108 Amur Creek Court
San Jose, CA 95120-4103

RE: NOTICE OF OUT OF STATE SUSPENSION ORDER

California License: A 131737
Case Number: 8002015016674

Dear Dr. Ng:

California Business and Professions Code section 2310 authorizes the Medical Board of California to immediately suspend the California medical license of any physician and surgeon whose medical license has been suspended or revoked in any other state or by any agency of the federal government. A copy of Business and Professions Code section 2310 is enclosed for your review.

The Medical Board of California has determined, upon review of certified documents from the Washington State Medical Quality Assurance Commission, that your Washington license to practice medicine was suspended on August 20, 2015. Based on this suspension, your California medical license has been suspended effective immediately. This action will be reported to the National Practitioner Data Bank and the Federation of State Medical Boards.

You have a right to a hearing on the issue of penalty, as provided by Business and Professions Code section 2310(c). This hearing will be held within 90 days from the date of request. You may send this request to:

Jose Guerrero
Supervising Deputy Attorney General
Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

Should the status of your medical license in Washington change, please notify us immediately. If you have any questions regarding this matter, please contact Brenda Allen at (916) 263-2624.

Sincerely,

Kimberly Kirchmeyer
Executive Director

Enclosure

DECLARATION OF SERVICE BY CERTIFIED U. S. MAIL

In the Matter of:

Yolanda Wai Ng, M.D.

8002015016674

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 2005 Evergreen St., Suite 1200, Sacramento, California 95815. I served a true copy of the attached:

Suspension Order

by mail on the following, by placing same in an envelope addressed as follows:

NAME AND ADDRESS

CERT NO.

Yolanda Wai Ng, M.D.
1108 Amur Creek Court
San Jose, CA 95120-4103

7012 3460 0002 5329 2736

The said envelope was then, on **September 25, 2015**, sealed and deposited in the United States mail at Sacramento, California, the county in which I am employed, as certified mail, with the postage thereon fully prepaid, and return receipt requested.

Executed on **September 25, 2015**, at Sacramento, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Brenda Allen
Declarant

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

FILED

JUL 10 2015

Adjudicative Clerk Office

In the Matter of the License to Practice
as a Physician and Surgeon of:

No. M2015-37

YOLANDA WAI NG, MD
License No. MD60150783

STATEMENT OF CHARGES

Respondent.

The Executive Director of the Medical Quality Assurance Commission (Commission) is authorized to make the allegations below, which are supported by the evidence contained in file number 2014-6648.

1. ALLEGED FACTS

1.1 On August 18, 2010, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active.

1.2 On June 1, 2014, Respondent began working for her employer, a healthcare network in eastern Washington. She had a positive urine toxicology screen during a routine employment intake test. On July 8, 2014, Respondent's employer referred her to Washington Physicians Health Program (WPHP). WPHP referred Respondent for a multidisciplinary evaluation at Hazelden Springbrook.

1.3 On July 23, 2014, Hazelden Springbrook's assessment team concluded that Respondent could not safely return to work until she completed inpatient treatment for cannabis dependence.

1.4 In August 2014, Respondent notified WPHP that she would not enter treatment. Thereafter, WPHP notified the Commission that Respondent is impaired by untreated cannabis dependence and is unable to practice medicine with appropriate safety to patients.

1.5 Respondent has continued to refuse to enter treatment as recommended by WPHP.

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ORIGINAL

2. ALLEGED VIOLATIONS

2.1 Based on the Alleged Facts, Respondent has placed her capacity to practice in question under RCW 18.130.180 (23)(b) which provides

RCW 18.130.180 Unprofessional conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter:

...

(23) Current misuse of:

(b) Controlled substances;

.....

2.2 The above violation provides grounds for imposing sanctions under RCW 18.130.160.

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3. NOTICE TO RESPONDENT

The charges in this document affect the public health, safety and welfare. The Executive Director of the Commission directs that a notice be issued and served on Respondent as provided by law, giving Respondent the opportunity to defend against these charges. If Respondent fails to defend against these charges, Respondent shall be subject to discipline and the imposition of sanctions under Chapter 18.130 RCW.

DATED: July 9, 2015.

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

Melanie DeLeon

MELANIE DE LEON
EXECUTIVE DIRECTOR

Colin Caywood

COLIN CAYWOOD, WSBA #40779
ASSISTANT ATTORNEY GENERAL

I declare that this is a true and accurate copy of the original on file
with the Washington State Department of Health,
Medical Quality Assurance Commission

Michael J. Kramer
Michael J. Kramer

7-11-15

Date



STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

In the Matter of the License to Practice
as a Physician and Surgeon of:

YOLANDA WAING, MD
License No. MD60150783

Respondent.

No. M2015-37

**STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
AGREED ORDER**

The Medical Quality Assurance Commission (Commission), through Rick Glein, Staff Attorney, and Respondent, who is not represented by counsel, stipulate and agree to the following.

1. PROCEDURAL STIPULATIONS

1.1 The Commission issued a Statement of Charges against Respondent dated July 9, 2015. These documents were served upon Respondent by mail on July 10, 2015.

1.2 In the Statement of Charges, the Commission alleges that Respondent is unsafe to practice due to current misuse of marijuana, a controlled substance, under the terms of RCW 18.130.180 (23)(b).

1.3 The Commission is prepared to proceed to a hearing on the allegations in the Statement of Charges.

1.4 Respondent has the right to defend against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.5 The Commission has the authority to impose sanctions pursuant to RCW 18.130.160 if the allegations are proven at a hearing.

1.6 The parties agree to resolve this matter by means of this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order (Agreed Order).

1.7 Respondent waives the opportunity for a hearing on the Statement of Charges if the Commission accepts this Agreed Order.

1.8 This Agreed Order is not binding unless it is accepted and signed by the Commission.

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STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND AGREED ORDER
M2015-37

PAGE 1 OF 6

ORIGINAL

1.9 If the Commission accepts this Agreed Order, it will be reported to the National Practitioner Data Bank (45 CFR Part 60), the Federation of State Medical Boards' Physician Data Center, and elsewhere as required by law.

1.10 This Agreed Order is a public document. It will be placed on the Department of Health's website, disseminated via the Commission's electronic mailing list, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). It may be disclosed to the public upon request pursuant to the Public Records Act (Chapter 42.56 RCW). It will remain part of Respondent's file according to the state's records retention law and cannot be expunged.

1.11 If the Commission rejects this Agreed Order, Respondent waives any objection to the participation at hearing of any Commission members who heard the Agreed Order presentation.

2. FINDINGS OF FACT

Respondent and the Commission stipulate to the following facts:

2.1 On August 18, 2010, the state of Washington issued Respondent a license to practice as a physician and surgeon.

2.2 Respondent's license is currently active.

2.3 On June 1, 2014, Respondent began working for her employer, a healthcare network in eastern Washington. Respondent had a positive urine toxicology screen test while working. On July 8, 2014, Respondent's employer referred her to Washington Physicians Health Program (WPHP).

2.4 Respondent has been assessed at Hazelden Springbrook as unsafe to practice medicine until she completes inpatient treatment for marijuana dependence. In August 2014, Respondent notified WPHP that she would not enter treatment. Thereafter, WPHP notified the Commission that Respondent is impaired by untreated cannabis dependence and is unable to practice medicine with appropriate safety to patients.

2.5 Respondent has continued to refuse to enter treatment as recommended by WPHP.

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3. CONCLUSIONS OF LAW

The Commission and Respondent agree to the entry of the following Conclusions of Law.

3.1 The Commission has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 Respondent has committed unprofessional conduct under RCW 18.130.180 (23)(b).

3.3 RCW 18.130.160 provides that the Commission may impose sanctions deemed necessary to protect the public.

4. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondent agrees to entry of the following Agreed Order.

4.1 License is Suspended. Respondent's license is suspended indefinitely.

4.2 Petition for Modification. Respondent may not petition for modification of this Order until she has completed all treatment and recommendations of WPHP and has been deemed fit to practice medicine with appropriate skill and safety to patients. If Respondent has been out of practice for more than two (2) years after entry of this Order, Respondent may petition for modification of this Order only after satisfying the following requirements:

4.2.1 At the Commission's discretion, Respondent may be required to successfully complete a skills assessment and evaluation from an assessment program selected by the Commission or the Commission's designee.

4.2.2 At the Commission's discretion, Respondent may be required to successfully complete the Federation of State Medical Board's Special Purpose Examination (SPEX).

Following a written petition for modification, Respondent must personally appear before the Commission, at a time and date set by the Commission. The Commission has full discretion as to whether to grant or deny the petition for modification. If the Commission grants the petition, the Commission may impose restrictions or other sanctions it deems necessary to protect the public.

ORIGINAL

4.3 Obey all laws. Respondent must obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

4.4 Compliance Costs. Respondent is responsible for all costs of complying with this Agreed Order.

4.5 Violation of Order. If Respondent violates any provision of this Agreed Order in any respect, the Commission may initiate further action against Respondent's license.

4.6 Change of Address. Respondent must inform the Commission and the Adjudicative Clerk Office, in writing, of changes in Respondent's residential and/or business address within thirty (30) days of the change.

4.7 Effective Date of Order. The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail.

5. COMPLIANCE WITH SANCTION RULES

5.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions.

5.2 Tier B of the "Substance Abuse Schedule" schedule, WAC 246-16-850, applies to cases involving misuse of drugs or alcohol with moderate patient harm or risk of harm. Tier B applies to the misuse of drugs aspect of this case since Respondent tested positive for marijuana during her employment. As Respondent had marijuana metabolites in her system, there was at least risk of moderate patient harm by detracting from the medical evaluation and care of patients, and anticipating and providing for patient safety needs, as well as the risk that the patients may lose confidence in the integrity of the medical profession. Schedule B of the substance abuse schedule sets forth a range of sanctions, including oversight from two to five years, up to license suspension or license revocation, depending on the circumstances and the aggravating and mitigating factors.

Tier C does not apply as there were no substance abuse allegations involving severe physical injury or death of a patient or a risk of significant physical injury or death.

5.3 As mitigating factors, Respondent has accepted responsibility for her unprofessional conduct and by entering into this Agreed Order, expressed her willingness to have her medical license indefinitely suspended, and should Respondent wish to have

her suspension lifted, she agrees to the evaluation, treatment, and testing requirements provided for in this Order.

5.4 As aggravating factors, Respondent refused to comply with WPHP's treatment recommendations.

5.5 Pursuant to WAC 246-16-800(3)(d), the Commission determines appropriate sanctions by starting in the middle of the applicable tier range and moving toward the maximum or minimum end of the tier based on the aggravating and mitigating factors. The Commission finds that Respondent's misuse of marijuana during her employment, demonstrated a potential inability to treat patients with reasonable skill and safety. Therefore, the indefinite suspension of Respondent's license is appropriate under WAC 246-16-800. The totality of aggravating factors in this case outweighs the mitigating factors. Patient safety requires indefinite suspension of Respondent's license preventing her from treating patients with no right to petition for termination until she completes the evaluation, treatment and testing requirements as described in paragraph 4.2, and complies with all other aspects of this order, along with a recommendation from WPHP that she is safe to practice.

6. RESPONDENT'S ACCEPTANCE

I, YOLANDA WAI NG, MD, Respondent, have read, understand and agree to this Agreed Order. This Agreed Order may be presented to the Commission without my appearance. I understand that I will receive a signed copy if the Commission accepts this Agreed Order.


YOLANDA WAI NG, MD
RESPONDENT

8/17/2015
DATE

7. COMMISSION'S ACCEPTANCE AND ORDER

The Commission accepts and enters this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order.

DATED: August 20, 2015.

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

Michael T. Carver
PANEL CHAIR

PRESENTED BY:

Rick Glein
RICK GLEIN, WSBA # 23692
COMMISSION STAFF ATTORNEY

I declare that this is a true and accurate copy of the original on file
with the Washington State Department of Health,
Medical Quality Assurance Commission

Michael J. Kramer
Michael J. Kramer

9-11-15
Date

